

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
)
Structure and Practices of the Video Relay Service) CG Docket No. 10-51
Program)
)

To: Secretary, FCC
For: The Commission

COMMENTS OF HAMILTON RELAY, INC.

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³ *Id.* ¶ 1.

I. Background

In the *Report and Order*, the Commission has adopted numerous regulations applicable to VRS providers in an effort to combat fraudulent activities that in some cases have led to criminal prosecutions of various individuals involved in the VRS industry. The *FNPRM* seeks to expand those regulations to IP CTS and IP Relay providers “to ensure that all entities seeking certification . . . are fully qualified to provide Internet-based relay service”⁴ Specifically, the *FNPRM* proposes that all Internet-based providers be required to obtain federal certification as the exclusive means of becoming eligible for compensation from the interstate TRS Fund.

Under present rules, IP Relay and IP CTS providers may establish their eligibility for compensation from the interstate TRS Fund in one of four ways, i.e., they must be: (1) TRS facilities operated under contract with and/or by certified state TRS programs pursuant to § 64.605; (2) TRS facilities owned by or operated under contract with a common carrier providing interstate services operated pursuant to § 64.604; (3) Interstate common carriers offering TRS pursuant to § 64.604; or (4) IP Relay and/or IP CTS providers certified by the Commission pursuant to § 64.605.⁵

⁴ *FNPRM* ¶ 95.

⁵ *Consumer & Governmental Affairs Bureau Clarifies the Eligibility Requirement for Compensation from the Interstate Telecommunications Relay Service (TRS) Fund for Providers of Internet Protocol Captioned Telephone Service*, Public Notice, CG Docket No. 03-123, DA 08-478, at 1 (CGB 2008).

II. Existing State and Federal Mechanisms Can Provide Sufficient Oversight of IP Relay and IP CTS Providers

Hamilton believes that the proposed new certification and compliance requirements are duplicative of current information collection requirements, including the Commission's new annual auditing requirements. In addition, Hamilton believes that existing state and federal procedures permit sufficient oversight of IP Relay and IP CTS providers, as described below.

A. IP Relay

As Hamilton has noted previously, in most cases an IP Relay service operates in tandem with a traditional relay service. Thus, the IP Relay traffic is handled by the same Communications Assistants ("CAs"), at the same work stations, with the same management and supervisory staff, all located in the same facilities, with traditional relay traffic and IP Relay traffic sharing common queues. Accordingly, there is already significant oversight of these facilities, both by the states that directly supervise the facilities through state TRS contracts, and by the Commission's direct certification authority over state TRS programs.⁶ In light of this combined federal-state oversight mechanism which is already in place, Hamilton believes that any relay provider which provides IP Relay service from facilities that predominantly handle relay traffic authorized by a Commission-certified state TRS program should be exempt from any additional federal certification requirements. The Commission already certifies such facilities through the state TRS certification program every five years and should continue to do so.⁷ On the other hand, if a facility handles IP Relay traffic only, it should be required to go through the proposed certification process set forth in the *FNPRM*, with suggested amendments outlined below in Section IV.

⁶ 47 U.S.C § 225(c), (f).

⁷ 47 C.F.R. § 64.605.

Under this approach, the Commission could require such state-certified TRS providers to certify under penalty of perjury every five years their compliance with specific IP Relay rules, including those related to: 1) deterring fraud, waste and abuse; 2) complying with 10-digit numbering requirements; 3) complying with emergency call handling requirements; 4) complying with all non-waived mandatory minimum requirements; and 5) prohibiting all international IP Relay traffic.

In sum, this approach would represent a reasonable, but verifiable, method that would supplement the Commission's auditing processes without adding burdensome new certification requirements for qualifying IP Relay providers. This approach would also be consistent with President Obama's Executive Order issued earlier this year, and the FCC Chairman's pledge to abide by that Executive Order, to use "the best, most innovative, and least burdensome tools for achieving regulatory ends."⁸ The use of existing regulatory tools is certainly less burdensome than adopting a wholesale new federal certification regime for IP Relay providers.

B. IP CTS

The IP CTS interstate rate is based on competitively-bid state rates and thus already provides inherent protection against waste. Specifically, the compensation rate for IP CTS is based on the Multi-state Average Rate Structure ("MARS"), which provides a simple, competitively-based methodology to establish the interstate rate annually for IP CTS and most other forms of relay. The use of competitively-bid rates ensures providers are compensated only for actual, efficient costs. The level of oversight and obligations proposed in the *FNPRM* arguably is only necessary where compensation is based on providers' projected costs, as there

⁸ *Improving Regulation and Regulatory Review*, Executive Order (rel. Jan. 18, 2011), available at <http://xrl.us/bkpzhv>; *Modernizing the FCC Form 477 Data Program*, Notice of Proposed Rulemaking, WC Docket No. 11-10, FCC 11-14 (rel. Feb. 8, 2011) (separate statement of Chairman Genachowski, at 2).

may be potential for fraud and limited incentives against waste and abuse. In the IP CTS context on the other hand, because state captioned telephone service is a competitively bid service (and because IP CTS rates are fundamentally based on that bidding process), the captioned telephone service provider's built-in incentive to provide efficient service at true cost in order to win the state bidding process carries over to IP CTS. MARS is effective because of its reliance on competitively-bid rates – precisely the reason additional reporting obligations are unnecessary and unwarranted.

Combined with the Commission's annual auditing authority and a certification every five years under penalty of perjury similar to the IP Relay proposal above, the Commission should have all it needs to ensure the integrity of IP CTS without adopting burdensome new certification requirements. In the case of IP CTS, the Commission could require IP CTS providers to certify their compliance with specific IP CTS rules, including those related to: 1) deterring fraud, waste and abuse; 2) complying with emergency call handling requirements that are applicable to IP CTS; and 3) complying with all non-waived mandatory minimum requirements.

Because Hamilton's proposed certification processes would provide the protections the Commission wishes to implement in order to deter fraud, waste, and abuse, while diminishing the need for new rules, Hamilton's less burdensome certification proposals should be given serious consideration by the Commission.

III. Any Certification and Compliance Rules Adopted Now Would Be Interim and Thus Premature

Hamilton believes that the adoption of new certification and oversight rules for IP Relay and IP CTS providers would be premature at this time. The Commission has an ongoing proceeding to reform the structure of the VRS program and, as the Commission acknowledges in

the *FNPRM*, any rules adopted in *this* proceeding may be “transitional.”⁹ Rather than adopting transitional rules that are subject to potentially wholesale revision once the VRS program is overhauled, the Commission should instead defer any decision to fundamentally alter the procedures for IP Relay and IP CTS certification. Once the VRS reform proceeding has been completed, the Commission may, at the appropriate time, seek comment on what if any changes should be made to the manner in which IP CTS and IP Relay providers are regulated, based on the record established in the VRS reform proceeding.

IV. If the Commission Nonetheless Adopts Additional Administrative Burdens for IP CTS and IP Relay Providers, Certain Provisions in the Proposed Rules Should Be Eliminated or Modified

If the Commission nonetheless decides to extend the VRS certification and compliance obligations to IP Relay and IP CTS, it should at the very least eliminate or modify certain provisions in the proposed rules because they are unnecessary or duplicative with respect to IP CTS and IP Relay providers.

A. Proof of Purchase or License Agreement

The proposed rules would require Internet-based TRS providers to submit:

(D) proof of purchase or license agreement for use of all equipment and/or technologies, including hardware and software, used by the applicant for its call center functions, including but not limited to, automatic call distribution, routing, call setup, mapping, call features, billing for compensation from the TRS fund, and registration....¹⁰

The submission of this level of detailed information, particularly for providers with large operations, would be significantly burdensome, and unnecessary in light of the Commission’s new annual audit requirement. Hamilton believes the Commission should only require providers to submit a list of such proofs of purchase and license agreements. The Commission would then

⁹ *FNPRM* ¶ 95.

¹⁰ *R&O and FNRPM App. D*, at 62.

have the information it needs and could request copies of documents on an as-needed basis. Additionally, the Commission should establish a threshold requirement – e.g., only list proofs of purchase or license agreements worth more than \$250,000 annually. Providers have hundreds of such agreements, such as headsets for Communications Assistants, which are simply not germane to a Commission review process.

B. Employment Agreements

The proposed rules would require Internet-based TRS providers to submit:

(E) copies of employment agreements for all of the provider’s executives and CAs¹¹

The Commission should clarify that the submission of such employment agreements should only be required for key employees. The production of potentially hundreds of CA employment agreements, most if not all of which contain substantially similar contractual terms, would be burdensome and unnecessary. The Commission could alternatively request a sample CA employment agreement and request that copies of any CA employment agreement that substantially differs from the sample also be provided.

C. Copies of All Other Agreements

The proposed rules would require Internet-based TRS providers to submit:

(H) copies of all other agreements pertaining to the provision of Internet-based relay service....¹²

This catch-all provision should be substantially limited to avoid an extreme reporting burden for providers. On its face, the requirement calls for the submission of potentially thousands of documents. IP-based relay providers, like all relay providers, have numerous day-to-day agreements pertaining to the provision of Internet-based relay service. Hamilton believes the

¹¹ *Id.*

¹² *Id.*

Commission should eliminate this provision from the final rules or significantly limit its scope by establishing a threshold contract amount – e.g., only contracts with an annual value of \$100,000 or more. Even then the provision appears to be unnecessary given the Commission’s authority to audit every provider on an annual basis.

D. List of all Sponsorship Arrangements

The proposed rules would require Internet-based TRS providers to submit:

(I) a list of all sponsorship arrangements (e.g., those providing financial support or in-kind interpreting or personnel service for social activities in exchange for brand marketing), including any associated written agreements....¹³

Hamilton believes the submission of such information would be unnecessary, particularly in light of the Commission’s auditing authority. At the very least, the Commission should establish a threshold contract amount – e.g., only sponsorship arrangements with an annual value of worth under \$10,000 annually *de minimis* to relieve providers of some of the burden.

E. The Commission Should Clarify the Scope of the Common Carrier Showing

Proposed new Section 64.606(a)(2)(iv) would require an applicant for federal certification to demonstrate “the provider’s status as a common carrier.”¹⁴ The scope of this request is not immediately clear. In particular, it is not clear whether the Commission is indicating that a provider must establish that it is a Title II regulated entity in order to qualify as an applicant, or whether the Commission is simply asking if the applicant is, or is not, a common carrier, with a negative answer being a non-determinative response. Hamilton requests that the Commission clarify the scope of this requirement in any final rules and the Commission’s expected evidence of common carrier status.

¹³ *Id.*

¹⁴ *R&O and FNPRM App. D*, at 63.

F. The Commission Should Not Require IP CTS and IP Relay Providers to Be Responsible for Providing All of the “Core Components” of Internet-based TRS

New Section 64.604(c)(5)(iii)(N) of the rules requires VRS providers to provide the “core components” of video relay service and prohibits them from contracting with a non-certified third party to provide interpreting and call center functions.¹⁵ It is unclear whether the *FNPRM* proposes to extend the “core components” rule to IP Relay and IP CTS providers.¹⁶

If it does, Hamilton believes that requiring third parties to seek federal certification will have a significant negative impact on the regulatory process by splintering responsibility among numerous parties and potentially flooding the system with new applicants seeking certification. In addition, such an approach is likely to lead to enforcement problems due to the number of parties involved and the lack of clarity as to which party bears responsibility for any given core component of a provider’s service.

The better approach, Hamilton submits, would be to require a federally certified IP-based relay provider to maintain responsibility for all aspects of its operations, regardless of whether those operations are performed in-house or contracted to third parties. This approach will ensure that the certified provider is directly accountable for any aspect of its operations.¹⁷ Given that the Commission may exercise its new regulatory tool of suspending payments to providers in any billing dispute for up to a year, there is a new and powerful incentive for providers to ensure that their core components, whether self-operated or outsourced, are in compliance with Commission rules and procedures.

¹⁵ *R&O and FNPRM* App. E, at 68 (codified at 47 C.F.R. § 64.604(c)(5)(iii)(N)).

¹⁶ See *FNPRM* ¶ 97 & n.268. The “core components” rule is not included in the proposed rules listed in Appendix D of the *R&O and FNPRM*.

¹⁷ This approach will also ensure that the Commission is not burdened with reviewing certification applications by third parties to determine which parties provide “core components” and which do not.

V. A Five Year Renewal Process Is Preferable to Annual Updates

Finally, the *FNPRM* requests comment on whether the Commission should require certified IP-based relay providers to provide updates to their application information annually, and whether the submission of such information would eliminate the need for renewal of certification every five years.¹⁸ Hamilton believes that the amount of documents that are proposed to be required for obtaining certification would be overwhelming if they were required to be updated annually. Accordingly, to the extent a federal certification process is mandated, Hamilton would prefer that the current five-year renewal certification process be retained as described above.¹⁹ Such an approach provides the Commission with sufficient oversight for services that have not had evidence of fraud, abuse or waste.

Respectfully submitted,

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¹⁸ See *FNPRM* ¶ 99.

¹⁹ 47 C.F.R. § 64.606(c)(2).